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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONNIE ONELY,
Plaintiff

v.

REDNER'S MARKETS, INC.
Defendant

: CIVIL ACTION

:

:

: No. 21-cv-4785

:

:

: Assigned to: Wendy Beetlestone, J.

EXHIBIT "F"



UNEMPLOYMENT COMPENSATION BOARD OF REVIEW
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TRANSCRIPT OF TESTIMONY

CLAIMANT:

CONNIE I ONLEY
700 LOWER STATE RD 23-B7
NORTH WALES PA 19454

SS NUMBER:

095-50-2580

APPEAL NUMBER:

21-89-I-2331

DATE OF HEARING:

5/26/2021 (TELEPHONE)

PLACE OF HEARING:

KING OF PRUSSIA PA

HEARING BEFORE:

R REFEREE TIFFANY MCMASTER

APPEARANCES:

Claimant

C Connie I. Onley

Claimant's Attorney

CL Allison Barker

Employer's Attorney

EL Jason Hopp

Employer Witnesses

EW1 Alexis Foreman
EW2 Karl Michener
EW3 Sandra McGrory
EW4 Shaun Rhoton

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BD-87 REV 1-16

KS - 000196
KS - MSJ 0001162

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May 26, 2021

R We are on record in Appeal Number 21-09-I-2331. The Claimant is Connie Onley. The Employer is Redner's Tiger Markets, Inc. The parties are scheduled to participate in the hearing today by telephone. The Referee is going to begin by calling the Claimant at Area Code 267, 475-8297, the Claimant's counsel at (215) 639-0801, the Employer's counsel at (484) 248-5820, the Employer's first witness at (484) 248-5870, and then three witnesses for the Employer at Area Code 215, 527-2392. The time is 8:30 a.m.

C Hello?

R Good morning. May I speak with Connie Onley, please?

C Speaking. Good morning to you.

R Good morning. This is Appeals Referee McMaster calling about your unemployment hearing. Are you ready to proceed?

C Yes, ma'am, I am.

R Okay. I need to place you on hold while I contact the rest of the parties. The next person I'm going to contact is your counsel. While I'm doing that, if for any reason you get disconnected from the call, please hang up and I will call you back. Okay?

C Thank you very much, ma'am.

UF Karpf Karpf & Cerutti.

R Yes, may I speak with Allison Barker, please?

UF May I ask who's calling?

R Appeals Referee McMaster.

UF Hold on one moment.

CL Good morning. This is Allison Barker.

R Good morning, Ms. Barker. This is Referee McMaster calling in reference to the hearing for Connie Onley. Are you ready to proceed?

CL Yes.

R Okay. I have your client on the other line so far. I need to connect you into the call. While I'm doing that, if you get disconnected, I will call you back. Okay?

CL Okay.

R Okay. Ms. Onley, do I still have you?

C Yes, ma'am, you do.

R Ms. Barker, do I still have you?

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CL Yes.

R All right. I need to place you both on hold while I begin contacting the representatives from the Employer. Same instruction. If for any reason during this process you get disconnected, once I realize you are no longer on the line, I will call you back. Okay?

CL Okay, yes.

EL Hello, this is Jason Hopp.

R Mr. Hopp, this is Appeals Referee McMaster calling in reference to the hearing for Connie Onley. Are you ready to proceed?

EL Yes.

R And just so I'm aware, sir, are you in-house counsel?

EL Yes.

R Okay. All right. So far, I have the Claimant and her counsel on the other line. I need to connect you into that call. While I'm doing that, if you get disconnected, please hang up and I will call you back. Okay?

EL Okay.

R Ms. Onley, do I still have you?

C Yes, ma'am.

R Ms. Barker?

CL Yes.

R And Mr. Hopp?

EL Yes.

R Okay. I need to place you all on hold while I continue contacting the individuals for the Employer. Same instruction. If you get disconnected, hang up and I will call you back.

EW1 Alexis.

R I'm sorry, is this Alexis Foreman?

EW1 Yes, it is.

R Ms. Foreman, this is Appeals Referee McMaster calling about the unemployment hearing for Connie Onley. Are you ready to proceed?

EW1 Yes, I am.

R Okay. So far, I have other parties on the other line in the call. Well, I need to connect you into that at this time.

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If you get disconnected while I'm doing that, hang up and I will call you back. Okay?

EW1 Okay, thank you.

R Okay. Ms. Onley, do I still have you?

C Yes, ma'am.

R Ms. Barker?

CL Yes.

R Mr. Hopp?

EL Yes.

R Ms. Foreman?

EW1 Yes.

R All right. There is one last number I need to call. I'm going to place you all on hold at this time.

EW2 Hello?

R Yes, may I speak with Karl Michener, please?

EW2 Michener.

R Michener. Is this Mr. Michener?

EW2 Yes, it is.

R This is Appeals Referee McMaster. I was calling in reference to the unemployment hearing for Connie Onley. Are you ready to proceed?

EW2 Yes.

R And do you have the other two individuals with you at this time?

EW2 I do have Shaun and Sandra here, yes.

R Okay. I need to connect you into the call. Everyone else is on the line at this point. While I'm doing that, if you get disconnected, please hang up and I will call you back. Okay?

EW2 Yes.

R Thank you. Okay. Ms. Onley, are you still there?

C Yes, ma'am.

R Ms. Barker?

CL Yes.

R Mr. Hopp?

EL Yes.

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R Ms. Foreman?
EW1 Yes.

R And Mr. Michener?
EW2 Yes.

R All right. I have all the parties on the line now. At this time, there are a few things I need to advise you before we get started today. The first is that I am digitally recording today's hearing. That will become the official record of the hearing, and I turned on my recorder before I began contacting any of the parties. We are on record at this time. During the hearing today, if you get disconnected from the call for any reason, please hang up, and as soon as I realize you are no longer on the line, I will call you back. During the hearing today, if you have difficulty hearing me or one another at any time for any reason, please let me know. If at any time any party -- I'm sorry, I think I already said that. If you get disconnected, I will call you back. All right. Ms. Onley, any questions about that information before we get started? Excuse me?

C Do you have any questions about the information that I just stated before we get started?
R No, ma'am.

R Ms. Barker?
CL No.

R Mr. Kopp?
EL No.

R Ms. Foreman?
EW1 No.

R And Mr. Michener?
EW2 No.

R All right. I'm going to begin the hearing, then, at this time with some opening statements. Good morning. This is the Unemployment Compensation Hearing in Appeal Number 21-09-I-2331. The Claimant is Connie Onley. The Employer is Redner's Tiger Markets, Inc. The hearing is taking place at the UC Referee Office. It is Wednesday, May 26, 2021. The time is 8:38 a.m. The hearing was scheduled to begin at 8:30 a.m. I am Appeals Referee Tiffany McMaster. I have been assigned by the Unemployment Compensation Board of Review to conduct today's hearing, take testimony and

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evidence on the issues under appeal, and issue a Written Decision to the parties. The hearing is being digitally recorded which will become the official record of the proceeding today. The Claimant is participating in the hearing today by telephone. For the record, ma'am, would you please state and spell your first and last name?

C Connie, C-O-N-N-I-E; last name, Onley, O-N-L-E-Y.

R Ms. Onley, what is your complete mailing address, please?
C 700 Lower State Road, Building 23, Apartment B7, that is located in North Wales, Pennsylvania 19454.

R And, Ms. Onley, you are represented by counsel today, is that correct?

C Yes, ma'am, I am.

R Counsel, for the record, please state and spell your first and last name.

CL Allison, A-L-L-I-S-O-N; Barker, B as in Boy, A-R-K-E-R.

R Ms. Barker, is your address correctly listed on your Entry of Appearance?

CL Yes.

R Is that the address you would like a copy of the Decision mailed to?

CL Yes.

R Thank you. The Employer is also participating in the hearing today by telephone. The Employer is represented. Would the Employer's counsel please state and spell your first and last name?

EL Jason Hopp, J-A-S-O-N, H-O-P-P.

R And, Mr. Hopp, you represented to me earlier when I contacted you that you are in-house counsel, correct?

EL Yes. I'm Vice President and General Counsel, Redner's Markets.

R And, Mr. Hopp, is the Employer's address correctly listed on the Hearing Notice?

EL The Audubon Village Drive address is the store address. The corporate address is -- where I'm located is different.

R Is that where you would like the Decision mailed to as opposed to the Audubon Village Drive address?

EL Yes, please?

R All right. Bear with me one second, please?

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EL Okay.

R Hold on. Is that the 3 Quarry Road, Reading?
EL Yes, uh-huh.

R Okay. So, that is actually on the e-mail that I received from your Executive Assistant. Is that the e-mail -- or, I'm sorry, is that the address you would like a copy of the Decision mailed to?

EL Yes, thank you.

R Now, Mr. Hopp, we also have an address for what appears to be a third party. My belief is that that would be Employers Edge, if memory serves. Do you -- does the Employer use a third-party tax consultant?

EL Yes.

R And do you...
EL And they get...

R ...know if that...
EL ...a lot of...

R ...address is correct?
EL Yes, I believe it is.

R Thank you. All right. Beginning with the Employer witnesses in the order in which I contacted you, so beginning with you, Ms. Foreman, would you please state and spell your first and last name for the record, and please give your job title?

EW1 Sure. Alexis Foreman, A-L-E-X-I-S, F-O-R-E-M-A-N, Director of Employee Relations.

R Mr. Michener, Ms. McGrory and Mr. Rhoton, would you all in that order do the same? Please state and spell your first and last name, and please give your job title.

EW2 Karl, K-A-R-L, Michener, M-I-C-H-E-N-E-R. I'm the Store Director.

EW3 Sandra, S-A-N-D-R-A, McGrory, M-C-G-R-O-R-Y, Meat Wrapper.
EW4 Shaun, S-H-A-U-N, Rhoton, R-H-O-T-O-N, Meat Cutter.

R Mr. Hopp, did the Employer receive its Notices of Hearing for today?

EL Yes.

R Did the Employer also receive a packet of documents with its Notice of Hearing for today?

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EL Yes.

R Ms. Onley, did you receive your Notice of Hearing for today?
C Yes.

R Did you also receive a packet of documents with your Notice
C of Hearing for today?
Yes.

R Since both parties are represented by counsel today, may I
assume that both parties are aware of their rights? Ms.
Barker on behalf of the Claimant?
CL Yes.

R Mr. Hopp on behalf of the Employer?
EL Yes.

R Do you waive recitation of the rights at this time, Ms.
Barker?
CL Yes.

R Mr. Hopp?
EL Yes.

R Thank you. All testimony in the hearing today must be under
oath or affirmation. Because the parties are testifying by
telephone, there is a second oath I need to administer to
you. At this time, Ms. Onley, Ms. Foreman, Mr. Michener,
Ms. McGrory and Mr. Rhoton, would you all please raise your
right hands? And please keep them raised until I advise you
to lower them.

PARTIES DULY SWORN

TELEPHONIC OATH

R You may lower your hands. Let the record reflect the
parties have been duly sworn. Today's hearing arises as the
result of an Appeal filed by the Claimant to a Notice of
Determination mailed on March 1, 2021, which denied benefits
to the Claimant under Section 402(e) of the Pennsylvania
Unemployment Compensation Law. Section 402(e) of the Law
provides that a Claimant will be ineligible for benefits for
any week in which they are temporarily suspended or
discharged from employment for reasons which constitute
willful misconduct in connection with the work. Under that
section of law, the Employer bears the burden of proof. At
this time, I am going to identify the documents in the
hearing file for their admission into the record, beginning

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with Referee exhibits. Referee Exhibit #1 is the Notice of today's hearing mailed on May 4, 2021. Referee 1-A were the typewritten Telephone Regulations that were attached to each party's Hearing Notice. Referee Exhibit 2 is an e-mail from Ms. Barker, dated May 24, 2021. This attached the Claimant's counsel's Entry of Appearance on behalf of the Claimant. Referee Exhibit 3 is an e-mail from the Employer, dated May 21, 2021, providing the contact information for the representatives present today from the Employer. Referee Exhibit 4 is an additional documentation for case file memorandum. This appears to indicate that additional documents were submitted by the Claimant; however, I thought, when I reviewed it, it appears as though it was just a secondary copy of an Appeal Form. Service Center Exhibit #1 is the Certification of Documents. SC-2 is the Petition for Appeal completed by the Harrisburg UC Service Center. 2-A is an Appeal Form which appears to have been completed by the Claimant and was submitted electronically on March 11, 2021. Exhibit 2-B is another Appeal Form which appears to have been completed by the Claimant and was submitted electronically on March 15, 2021. Exhibit 3 is the Notice of Determination. This was mailed on March 1, 2021 and lists the last day to appeal as March 16, 2021. So, the Claimant's Appeal was timely. Exhibit 4 is a four-page Internet Initial Claim Form. This document indicates it was created on December 8, 2020. Ms. Onley, when you filed your claim for benefits, did you do that online?

C

Exhibit 5 is a five-page document. This appears to indicate the Employer's third party submitted information to the Department electronically, and I will also note that there were attachments indicated on Page 5. Service Center Exhibit 6 is the computerized Claim Record kept by the UC Service Center related to the Application for Benefits filed by the Claimant, effective October 4, 2020. The attachments that were part of the file are as follows for identification purposes only: Document #1 is on the letterhead of the Employer, titled Policies and Procedures Acknowledgment Form. The next document is what appears to be numbered at the bottom with the number 8. At the very top is the -- it is stated No Harassment. The next document is titled Employee Warning Record. This appears to be dated October 7, 2020. The next document is several pages. It is a handwritten statement and appears to be dated October 1, 2020. The last document is a handwritten statement. This appears to be dated October -- I'm going to say I believe it's 4, 2020. Those documents will be available for the Employer to offer into the record during the testimony.

R

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They will not be offered into the record at this time. With respect to the Service Center and Referee exhibits only, Ms. Barker, any objections to those documents becoming part of the record?

CL I would object to Service Center Exhibit 5. The third-party individual who doesn't have firsthand knowledge filled that out, so I would argue that that's hearsay.

R Mr. Hopp, do you have any objection to Ms. Barker's -- I'm sorry. Do you have any response to Ms. Barker's objection to Exhibit 5?

EL I have no objection to not considering that.

R Okay. All right, the document -- I'm sorry. The objection will be sustained in part. The document will be entered into the record to show a response was provided. The hearsay content contained within the response will not be considered by the Referee.

CL Okay, thank you.

R Any other objections, Ms. Barker?

CL No.

R Mr. Hopp, any objections to the Service Center or Referee exhibits?

EL No.

R Service Center and Referee exhibits are entered into the record without objection, with the exception of Exhibit 5, the hearsay content contained on that document. The objection is sustained. The procedure that we're going to follow in the hearing today is, Ms. Onley, I'm going to begin with you briefly by asking you some background questions regarding your employment history with Redner's Tiger Markets, Inc. I am, then, going to turn to the Employer. I would like to begin with the Employer witness that can verify the background information provided by the Claimant regarding her employment history, such as the dates of employment, job title and rate of pay. I will, then, take each Employer witness's testimony one at a time. I will have questions for each witness potentially regarding this Claimant's separation from employment. When I am done with the questions I have, I will turn that witness's testimony over to the Employer's counsel. Mr. Hopp may also ask that witness questions. When Mr. Hopp has completed his examination of the witness, Ms. Barker, you may cross-examine that witness. After the Employer has completed its testimony, I will turn back to the Claimant. I will begin with you, Ms. Onley, by asking you a few questions about why

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you stopped working for the Employer at the time you did. When I am done with the questions I have for the Claimant, Ms. Barker, you may also question your client. When Ms. Barker has completed her questions, Mr. Hopp, you have the right to cross-examine the Claimant. At that point, I will turn back to each party once if there is any rebuttal or additional testimony or evidence that party wishes to offer. These would be things that you did not present the first time around. After that, I will move to close the hearing record and the parties will get a Written Decision in the mail from me as soon as possible. Ms. Barker, on behalf of the Claimant, any questions about the hearing procedure?

CL

No.

R

Mr. Hopp, on behalf of the Employer, any questions about the hearing procedure?

EL

No.

R

Okay. Ms. Onley, are you currently working?

C

Yes.

R

When did you begin the job you're working in now?

C

The last week of March.

R

Prior to that employment, who was your last Employer?

C

Redner's Markets.

R

What was your job title there?

C

I was the head of the Seafoods, in charge of the Seafoods.

R

Okay. Ms. Onley, I just want to make sure that I'm clear. When you filed your claim, you said you were an associate in the Meat Department.

C

Yes, ma'am. That's part of the Meat Department, the Seafoods Department. That's where I worked.

R

Okay. Was your employment full-time or part-time?

C

Full-time.

R

What was your final rate of pay in that position, if you recall?

C

Well, I was at 14.25, I think.

R

Now, I'm asking this just as a point of reference, Ms. Onley. If you disagree, that is okay. If I told you that in the Employer's response, they indicated it was 14.75 an hour, does that sound correct?

C

It could be, yes.

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R Could be? Okay, fair enough. All right. Do you recall
 C what your first day of work was, Ms. Onley?
 It would have been October 15, 2017.

R What was the last day that you worked for the Employer?
 C I believe -- well, I filed October 4th, so I believe it was
 like September 28. I could be wrong. I believe it was a
 Saturday, but I'm not accurate on that.

R So...
 C And it was actually...

R ...let's do this. September 28th was a Monday, September
 26th was a Saturday. Does it sound like it could have been
 on the 26th?

C Yes, because I did work Saturdays, yes, ma'am.

R Okay. And why was that your last day of work for the
 Employer? Did the Employer discharge you? Did you
 voluntarily leave your job, or did you stop working for
 another reason at that time?

C No, ma'am, my last day -- I was off on Sunday, so I didn't
 get to speak to anybody before Monday. I went in to work on
 Monday and saw Karl, and we went into the office and talked
 about an hour. And, after that hour, he told me to clock
 out and he would call me.

R Okay. And so, did you return to work after that?
 C No. I was told to wait until he called, so that's what I
 did.

R And did he call you?
 C The next day, he didn't call like he said he would. So, I
 think I called them Monday morning, and he was going to get
 back to me; and, later on, he called me and told me I wasn't
 coming back.

R Okay. Were you told you were discharged?
 C On the phone call, yes. He apologized and said, I'm sorry,
 but the news is they're not -- we are not going to have you
 back.

R And at the time -- and was that Mr. Michener that told you
 that?

C Yes, ma'am.

R At the time he told you you were being discharged; did he
 tell you why?

C He -- I believe he said for improper conduct.

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R Do you recall being given any other reason besides that, or
was that the only one?

C Well, initially, when we spoke in the office, it was about
apparently I was aggressive towards Sandy, which is not
true. I never went toward her.

R Okay.

C She came...

R Ma'am...

C ...to him...

R Ma'am...

C ...and told him that.

R Ma'am, Ms. Onley...

C Yes?

R ...all I want to know is, were you given any other reason
for your termination besides improper conduct?

C No.

R Okay. Thank you, Ms. Onley. I will get back to you. Now,
Mr. Hopp, given Ms. Foreman's job title, can I assume that
she can verify the employment history information for me?

EL Yes.

R Ms. Foreman, what was the Claimant's job title?
EW1 Her job title was Meat Wrapper.

R Was she employed full-time or part-time?
EW1 Full-time.

R Do you know what her final rate of pay was?
EW1 14.75.

R Is that per hour?
EW1 That is per hour, yes.

R When did the Claimant begin her employment?
EW1 The date of hire was 10/15/2017.

R What do you show as the last day of work?
EW1 10/5/2020.

R Did she physically work on that date, to your knowledge?
EW1 Yes, she did.

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R And, Ms. Foreman, do you know why that was the Claimant's last day of work? Was she discharged? Did she quit or did she stop working for another reason?

EW1 She was discharged.

R Did you participate in the decision to discharge the Claimant, Ms. Foreman?

EW1 Yes, I did.

R What was the reason for the Claimant's discharge?

EW1 We terminated her for violating our harassment policy.

R Is that the only reason for discharge, Ms. Foreman?

EW1 Yes, it is.

R What does the Employer's harassment policy say as it relates to the reason for the Claimant's discharge?

EW1 Offensive remarks, comments, jokes as far as verbal conducts pertaining to an individual's race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, disability or handicap, business status, service member status or any other categories protected by federal, state or local law...

R And are you...

EW1 ...as always...

R Ms. Foreman, are you reading from something?

EW1 Yes, I am.

R What are you reading from?

EW1 I'm reading from Page 8 of our Company Handbook, which outlines our harassment policy.

R And, to your knowledge, was that one of the documents in the file?

EW1 It's one of those. It was listed as Document #2.

R Well, no, it's not.

EL I believe when you referred to various documents, starting in #1...

R Yeah.

EL ...#2...

R No, that was just...

EL Yeah.

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R That was just to separate them out. I didn't -- I understand what you're saying. But that's -- we're going to mark this as Employer's Exhibit 1. Ms. Barker, any objection to Employer's Exhibit 1?

CL My only objection is -- just sort of for the record -- that it's just a single page out of what appears to be a bigger document. So, I would object that it can be taken out of context and there might be other relevant parts.

R Mr. Hopp, do you have any response to that objection?
EL Yeah, it's -- the testimony which would come from Ms. Foreman would state that this is the portion, this is the policy that, the specific policy that formed the basis of the termination of the Claimant. Ms. Foreman would testify that this policy is not misstated or taken out of context and is consistent with standard harassment policies in the industry, and it's a company record that she can authenticate.

R Okay. Ms. Barker, your objection to Employer's Exhibit 1 is noted but overruled. Employer's Exhibit 1 is entered into the record. Ms. Foreman, does this policy specify what will happen if an employee violates it?
EW1 Yes, it does. It states on Page 8 of the Company Handbook, violation of this policy will result in disciplinary action up to and including termination.

R And how are...
EW1 This is in the second paragraph.

R I am sorry, ma'am. I apologize.
EL Hold on.

R How are employees made aware of this policy, Ms. Foreman?
EW1 They are asked to read this policy while doing onboarding for their new-hire paperwork. And we also have a document showing that Connie signed acknowledging that she read and understood the material in the Handbook, and that we could enter that in as well.

R And what is that document titled?
EW1 Policies and Procedures Acknowledgment Form. Initially, you referred to it as Document #1.
EL I believe that it is admitted.

R No, it has not been.
EL Well, you referred to it as Document #1. Employer 1 is that...

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R I believe...

EL ...document.

R Let's just clear this up right now. I believe I referred to the document as page, not...

EL All right.

R ...as document. They were not entered into the record as an exhibit. I believe I was clear that I said those documents may be offered during the testimony.

EL All right, very well. So, then -- so, from my records, Employer Exhibit 1 was Page 2...

R Employer's...

EL ...of the...

R ...Exhibit 1 was the policy.

EL Okay, thank you.

R I am marking as Employer's Exhibit 2 the document identified by Ms. Foreman as the Policies and Procedures Acknowledgment Form.

EL Thank you.

R Ms. Barker, any objection to Employer's Exhibit 2?

CL No.

R Employer's Exhibit 2 is entered into the record without objection. Now, Ms. Foreman, how is the Employer alleging the Claimant violated this policy?

EW1 The harassment policy, by her comments towards her co-worker, Sandra, about discussing a sex toy after watching a particular movie. She also suggested you could pull a prank on another employee by hiding the sex toy in their coat. And the Claimant admitted both these occurrences to the Store Director.

R Okay. Were you present when she allegedly did so?

EW1 I was not present.

R Okay. How did you become aware of the alleged incident, Ms. Foreman?

EW1 Karl Michener, the Store Director, contacted me.

R And did you...

CL Sorry, Referee. Referee, I'll just object to her testimony regarding what others told her as being hearsay.

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R Your objection is noted but overruled. After the information was reported to you by the Store Director, Ms. Foreman, did you do anything with that information?

EW1 Yes, I did. I asked Karl to speak with Connie, as well as get statements from Sandra and Shaun.

R Mr. Hopp, do you have additional questions for Ms. Foreman?
EL Yes, just more clarification. So, Exhibit -- Employer's Exhibit 2, the Policies and Procedures Acknowledgment Form, how is that generated, Ms. Foreman?

EW1 When an employee has applied and is then offered a position, this is an onboarding document that they are to fill out for new-hire paperwork. And once this is generated, the employee has read and understands the policies, and that's what they're signing off on. This is part of the new-hire packet upon hire.

EL And Employer Exhibit 2, the name at the bottom is what?

R Okay.

EW1 Connie...

R Mr. Hopp...

EW1 ...Onley.

R ...I'm sorry, doesn't the document speak for itself? It's already been entered into the record. I don't know where we're going with this.

EL Yes, ma'am, that's fine. Based on your satisfaction with the document speaking for itself, I have no further questions of Ms. Foreman.

R Ms. Barker, do you have any questions for Ms. Foreman?

CL Yes. Ms. Foreman, does this -- the policy, Employer's Exhibit 1, was that also applied to Ms. McGrory and Mr. Rhoton?

EW1 Yes, it was.

CL Okay. And if you see at the bottom of Employer's Exhibit 1, it's kind of cut off, but it says if you have any concern or know harassment policy may have been violated by anyone, you, from your knowledge, what -- is that a direction of how to, how and when someone should report something they believe is a violation of this policy?

EW1 That is correct.

CL Okay. And what -- when should someone report that they believe there was a violation of this policy?

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EW1 I would think when they believe there was a violation of policy, they should offer that -- I'm not sure...

CL Okay.

EW1 ...of what you're asking.

CL I just -- I'm in a car. Because I don't know what the remainder of the no-harassment policy says, but I'm just kind of trying to find out what that says, that whole part, what the remainder of it would say.

EW1 It's simply stating that if you feel that someone is violating the harassment policy, it directs you to contact your direct supervisor and/or HR Coordinator or Director.

CL Okay. Were you ever directly contacted by Ms. McGrory or anyone else regarding anything related to Ms. Onley?

EW1 I was contacted by Karl.

CL Okay. So, not directly by Ms. McGrory?

EW1 No.

CL Okay. Did Ms. Onley ever report any violations of this no-harassment policy, to your knowledge?

EW1 Not that I'm aware of, no.

CL Okay. Did you speak directly to Ms. Onley about any of the alleged comments that were made?

EW1 Not that I recall.

CL Did you speak directly with Ms. McGrory about anything that Ms. Onley said?

EW1 No, I did not.

CL And you testified that you directed Mr. Michener to speak with Ms. Onley and get statements from Ms. McGrory and Mr. Rhoton. Why did you not ask him to get a statement from Ms. Onley?

EW1 I did.

CL Okay. And do you know if he did that?

EW1 Yes, he did.

CL Was that a written statement?

EW1 I don't believe we received a statement from Ms. Conley -- I'm sorry, from Connie Onley.

CL And did you ever hear from Ms. McGrory that anything that Ms. Onley may or may not have said was offensive to her? Did she ever tell you that directly?

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EW1 I already testified that.

CL Okay. And did you, were you ever present for any -- did you ever directly hear Ms. Onley say anything that would be a violation, in your opinion, of this no-harassment policy?

EL Well, objection.

EW1 I already testified...

EL Asked and answered.

EW1 ...to that as well.

EL It's already...

R Okay, hang on. Hang on. I'm sorry. Hang on. Mr. Hopp, start your objection over again because I missed the first couple of words.

EL Asked and answered. Ms. Foreman already testified she didn't personally speak with Ms. Onley on this matter.

R Well, that wasn't her question, Mr. Hopp. It was whether or not she ever observed the Claimant violate the policy in any way. I don't believe it's entirely relevant, though, Ms. Barker, but it's not asked and answered. So, the objection is overruled. Ms. Foreman, do you have any answer?

EW1 I would like her to restate that because that's not how I heard the question, either.

CL Did you ever hear Ms. Onley say anything that you believe is a violation of the no-harassment policy?

EW1 No. And, again, I already answered that.

CL Okay. All right. That's all I have, Referee.

R Mr. Hopp, do you have any redirect to Ms. Foreman?

EL No.

R All right. Mr. Michener, I'd like to ask you some questions next, please? Mr. Michener, Ms. Foreman testified that you reported something to her involving Ms. Onley. Is that correct?

EW2 Yes.

R Do you recall on what date you did so?

EW2 It would have been October 1st or 2nd. I think October 2nd.

R And what prompted you to contact Ms. Foreman at that time?

EW2 The statement from Sandra McGrory.

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R And had you -- how did that statement come about? Can you explain what happened?

EW2 There was a conversation going on between...

R No, no, no.

EW2 ...Sandra...

R What I'm asking is, how did you become aware of what you eventually reported? I'm trying to understand the foundation of that.

EW2 Well, as the Store Director, I'm involved with what's going on in the store. The statement was given to me when I came to work from my Assistant Manager, who was here when this happened.

R And based on what the Assistant Manager reported to you, is that what prompted you to contact Ms. Foreman?

EW2 Based on his information, and also after reading the statement from Ms. McGrory.

R After you reported this information to Ms. Foreman, what, if anything, did you do?

EW2 I got the statement from Mr. Rhoton, and then brought in Ms. Onley to talk about what happened.

R Do you recall on what date you spoke to Ms. Onley?

EW2 I believe it was Monday, the 5th.

R Of October?

EW2 Yes.

R Okay. And...

EW2 It would have been her last day worked.

R And tell me about that conversation, Mr. Michener.

EW2 I went through essentially the statement that was written from Ms. McGrory first, which alluded to politics as the catalyst for the argument that day and discussed if that was conversation which she was a lone participant or if both were lone participants of, and she had said yes. She showed me text messages on her phone, that they communicated back and forth about it with no animosity, just political conversation between two co-workers at that point. Then, I discussed the use of the toy following her watching Fifty Shades of Grey, which she alluded to, you know, her being, you know, a woman and without a, sorry, without her husband anymore, and essentially, you know, sometimes you have to -- anyway. And then, also, Mr. Rhoton's statement, which goes along with Ms. McGrory's statement about the use of a toy.

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And then, I also spoke to her about the use of the toy as part of a prank on Mr. Rhoton by putting it in his meat coat. So, she didn't deny, you know, those things. She admitted that she did.

R Well, what did she say?

EW2 Again, she said that she did use the -- well, did speak about using the toy after watching the movie with Ms. McGrory; and, also, that she was going to play a prank on Shaun by putting a sex toy in his coat pocket, his meat coat pocket.

R Did anything else happen during that conversation, Mr. Michener?

EW2 It was a long conversation about that. The only other thing that stands out is that she felt that she didn't want other employees to get in trouble for what we were talking about. I'm not sure why she said that. She didn't complain about any of the employees she was working with. She did say that the conversation was brought up about the use of toys previous to that date. I don't remember in what context, though, or who brought up that conversation.

R Okay. Mr. Hopp, do you have additional questions for Mr. Michener?

EL Yes. Mr. Michener, you know, this is proceeding with the record, and we need to clarify things, because you keep using the referenced toy. And I think, you know, we understand what you're referring to, but the record needs to speak for itself. So, can you specifically state what Ms. Onley admitted to using when you used the word toy?

EW2 A dildo.

EL All right. And did she admit to using this dildo, the sex toy to another employee in the workplace?

EW2 Yes.

EL Because you used the word discussed. And when -- I wanted to clarify with that discussion. Where did that discussion with other employees take place?

CL I would object to that. I don't believe Mr. Michener was present for any conversation, so it would just be hearsay.

EL No, it's the admission of the Claimant, what did she admit to where -- what she discussed and with whom.

R Okay. So, the...

EL I mean, that's...

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- R Okay, excuse me. So, Ms. Barker, your objection is noted but overruled. Based on that clarification, I don't believe that he is attempting to elicit hearsay.
- EL All right. So, Mr. Michener, where did Ms. Onley admit to having this discussion?
- EW2 In the Meat Department.
- EL Did she -- was this during the workday where she was having this discussion?
- EW2 It was. Three employees were back there in the Meat Department at the time: Ms. Onley, Ms. McGrory and Mr. Rhoton.
- EL All right. Now, did any time prior to this day did Ms. Onley complain to you or, to your knowledge, to any other supervisors at the store of any employee she worked with for any reason?
- EW2 No.
- EL Now, did you ever receive any complaints prior to this discussion with Ms. Onley that Ms. McGrory engaged in any kind of discussion with sex toys?
- EW2 No.
- EL I have nothing further.
- R Ms. Barker, do you have questions for Mr. Michener?
- CL Yes. Mr. Michener, did -- there was reference to some prank, read of a prank about putting the sex toy in a coat. Did, to your knowledge, did that ever actually occur?
- EW2 No.
- CL Okay. And did you get a statement from Ms. Onley the day that you spoke with her, a written statement?
- EW2 I didn't get a written statement. What I recall is, as Ms. Onley stated, we spoke for about an hour. And, after that, I asked for a written statement, and she basically said we just -- you want me to write all that down?
- CL Were you taking any notes while she was telling you -- or while she was speaking to you?
- EW2 I was not.
- CL Okay. And you had testified that, you know, the conversation had been brought up before. Did Ms. Onley tell you that Ms. McGrory is the one who first spoke about a sex toy?
- EW2 Yes.

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CL Okay. And did you discipline Ms. McGrory for that?
 EW2 I responded to that by talking to Ms. McGrory again and noting that Ms. Onley spoke that way, and she denied that. So, I did not discipline a person who was denying that.

CL Okay. And did Ms. McGrory ever tell you when Ms. Onley allegedly first spoke about a sex toy?
 EW2 She did not.

CL Okay. And the day that Ms. McGrory made the statement, you testified that there had been a conversation regarding -- I think you said politics, is that correct?
 EW2 Yes.

CL And did anyone -- did Ms. Onley or anyone else report to you that Ms. McGrory had been screaming and yelling in the department?
 EW3 Um-hum.

EW2 Yes.
 EW3 Um-hum.

CL Okay. Was Ms. McGrory disciplined for that?
 EW2 No.

CL Okay. And she -- Ms. McGrory is still an employee at Redner's, isn't that correct?
 EW2 Yes.

CL Okay. And do you know what, if Ms. McGrory ever said anything related to, race-related matters at the -- as you phrased, the politics, but was it race-related?
 EW2 The only thing I'm aware of is what was in the statement.

CL Okay. Did Ms. Onley express to you what Ms. McGrory had been yelling about?
 EW2 Ms. Onley stated that the politics were essentially when the riots were going on and who was the cause of it, I believe in general was the politics that were being discussed. I know antifa and I think the Proud Boys were possibly brought up when I discussed this with Ms. Onley.

CL Okay. And did Ms. McGrory receive any discipline as it related to those discussions?
 EW2 No. I didn't receive a complaint.

CL Okay. Do you need to receive a complaint in order to issue discipline to somebody?
 EW2 Well, I don't think politics are off limits for discussion.

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CL Well, if they violate the no-harassment policy in relation to an individual's race, that would violate Redner's no-harassment policy, correct?

EW2 Could you -- I'm sorry. Could you say it one more time?

CL If an employee was speaking about politics but as it relates to race, or making comments about, for example, the Black Lives Matter movement...

EL I'm...

CL ...would that...

EL I'm going to object to -- if you would like me to state the basis?

R Yes.

EL As to relevance. We're -- Redner's is alleging that the Claimant was terminated for violation of the sexual harassment policy. I understand an argument could be made that we're not enforcing that policy equally; however, there's no suggestion being made that Ms. McGrory sexually harassed the Claimant or anyone else. Therefore, any discussions as to politics, et cetera, is irrelevant.

R Ms. Barker, do you have a response to that objection?

CL Yes. Our response is, the day at issue, there was not -- there's been no testimony that there was anything related to sex being discussed. It was politics and it was race-related, as my client will testify to. And that's exactly the point. The relevance of it is that this same no-harassment policy -- which includes race and sex -- was not being enforced evenly.

R All right. Mr. Hopp, your objection is noted but overruled. I'm going to allow it in order for the record to be completed, and it will be considered by me for whatever probative value it may have. Go ahead, Ms. Barker.

CL Okay. Mr. Michener, if an employee raised a concern that political race-related discussions were happening, would that be considered a violation of the no-harassment policy?

EW2 If that person felt harassed, yes.

CL Okay. And did Ms. McGrory tell you that she felt harassed by Ms. Onley?

EW2 I don't recall.

CL Okay. So...

EW2 I know...

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CL ...what...

EW2 I know that she told me she felt that that conversation was unwarranted, and she wanted nothing to do with it, which I think is reflective of her statement as well.

CL Okay. And if an employee -- if Ms. McGrory did not report any alleged comment about a sex toy until over a month later, is it fair to say that she maybe did not feel harassed at the time that it happened?

EL Objection, calls for speculation.

R Sustained.

CL Did you take into consideration the time between when any alleged comment happened by Ms. Onley and the time it was reported?

EW2 No.

CL Did you take into consideration that why it was after reported what had happened the day -- issue the final day of Ms. Onley's employment?

EW2 Sorry, repeat that.

CL Did you take into consideration that it wasn't until Ms. McGrory and Ms. Onley had a discussion related to politics that then, suddenly, an issue, an alleged issue with the sex toy was brought up? Did you take -- did you consider that and investigate that and address...

EW2 I investigated based off of the statement that I had received from Ms. McGrory. I followed its, I guess, its timeline or what happened based off of that statement. That's what I investigated.

CL Okay. And just to be clear, did Ms. McGrory ever report to you that Ms. Onley made any sexual advances to her?

EW2 Not -- no.

CL Any requests for sexual favors?

EW2 No.

CL Any offensive sexual remarks?

EW2 You mean apart from what the statement is?

CL I just mean at any time.

EW2 Based off of the statement, I would say she took offense from being told about the use of a sex toy after watching a movie and claiming it, and the discussion of using it as a prank.

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CL Did you -- are you, as the Store Director, are you in the Meat Department? You know, do you get to oversee or see what happens in the Meat Department?

EW2 On occasion.

CL Okay. Have you ever heard any discussions related to sex in the Meat Department?

EW2 I don't recall any...

CL Have you ever...

EW2 ...such discussion...

CL Have you ever partaken in any discussions as it relates to sex in the Meat Department?

EW2 No.

CL Did you ever hear Ms. McGrory say anything about sex or anything related to sex in your presence?

EW2 No.

CL Okay. That's all I have, Referee.

R Mr. Hopp, do you have any redirect of Mr. Michener?

EL Yes, please, just to kind of button this up. I would submit, Mr. Michener, Employer Exhibit 3, which is entitled Employee Warning Record. Just for identification purposes, the signature of person preparing, Karl Michener, Store Director, dated October 7, 2020. Did you write this document?

EW2 Yes.

EL All right. And is this document a business record of Redner's, kept in the ordinary course of business?

EW2 Yes.

EL All right. And then, at the top, it says Employee's Name, Connie Onley, the Claimant here; and date, October 7, 2020. So, you prepared this document after speaking to Ms. -- after speaking to the Claimant?

EW2 Correct.

EL All right. And then, can you just clarify how you came about to writing this document and led to your decision for termination?

EW2 After gathering all the statements and speaking with Ms. Onley, I reported back to Ms. Foreman, and the discussion -- or the decision was made to terminate based on harassment. So, I wrote up the main points of the harassment on this warning form after I spoke with Ms. Onley.

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EL So, you communicated it on the phone with Ms. Onley that she was terminated for the basis of what's in the warning record?

EW2 Correct.

CL Referee, I'm sorry, I'm just going to object. My understanding of redirect is that it would just be based on what was elicited during cross. It seems to be new testimony, and so I just want to object to that for the record.

R I'm sorry, why is it that he's not allowed to ask additional questions on redirect?

CL I just -- my understanding of redirect is that it would only be based on things that were elicited during cross-examination. And that's my -- that's why I'm objecting.

R Your objection is noted. It's overruled.

CL Okay. All right.

EL I would ask that Employer Exhibit 3 be moved into evidence.

R Ms. Barker, any objection to Employer's Exhibit 3?

CL No.

R Employer's Exhibit 3 is entered into the record without objection.

EL All right. So, when you, Mr. Michener, when you spoke to Ms. -- to the Claimant on October 5th, did she ever tell you that she felt that she was being harassed by anyone?

EW2 No.

EL All right. Now, Ms. McGrory, I believe her title is Meat Wrapper. Is that accurate?

EW2 Yes.

EL All right. And Mr. Rhoton is an hourly employee in the Meat Department, too?

EW2 Correct.

EL All right. So, neither of them are in a supervisory capacity...

R Okay.

EL ...in the...

R Mr. Hopp, I need to just caution you about the extent in which you are leading in your questioning.

EL Yes, ma'am, I will do better. Thank you. Are those two individuals supervisors?

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EW2 No.

EL All right. So, when was the first time you became aware of Ms. McGrory's allegations about the Claimant, that the Claimant discussed using a sex toy at work?

CL Objection, Referee. I believe this has been asked and answered.

R Sustained.

EL All right. I have nothing further.

R Ms. Barker, do you have additional questions at this time for Mr. Michener?

CL Very briefly. Mr. Michener, based on Employer's Exhibit 3, this piece of paper was not signed by Ms. Onley, is that correct?

EW2 Correct.

CL And prior to you creating this paper, was there any other warnings or discipline ever issued to Ms. Onley prior to this?

EW2 Not from me.

CL Okay. And so, and this Employee Warning Record, it shows that you're an employee -- it shows different options, is that correct? There's a first warning, second warning, third warning, correct?

EW2 Correct.

CL Okay. And so, Ms. Onley did not receive a first warning, second warning or a third warning for anything, any violation of any policies at Redner's, is that correct?

EW2 Any policies or this policy?

CL Any policies as it would relate to her ultimately being terminated.

EW2 I don't have access to that. I can't answer that with knowing -- none created by me, that I...

CL Okay.

EW2 ...Can say.

CL Did you consider any other -- any previous discipline in your decision to terminate Ms. Onley?

EW2 It wasn't my decision to terminate Ms. Onley.

CL Okay. Okay, that's all I have.

EW2 Okay.

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R All right. Unfortunately, we have run out of time for this hearing, so I'm going to have to reschedule this matter to conclude it. At this time, I'm going to give the parties the opportunity to send an e-mail to my office by the close of business today. What I need to know from the parties are any dates that you are aware of in the next month -- and that just gives us a broader spectrum to play with in terms of rescheduling -- that the party is unavailable. So, Ms. Barker and Mr. Hopp, on behalf of your respective clients, I will be expecting you to be providing that information to my office. You may do so via e-mail, and, again, that is by close of business 5:00 today. If I do not hear from a particular party or either party before the close of business today, I will put this on my next available schedule, and, absent an emergency, I will not be very amenable to rescheduling the hearing due to any conflicts that you may have been already aware of. Ms. Barker, any questions about that?

CL No. Thank you, Referee.

R Mr. Hopp?

EL Just one question. Some witnesses, such as Mr. Michener and Ms. Foreman, already testified. If they're no longer needed, I don't need to determine their availability, I just need to counsel need of them present.

R And that's a decision that you have to make, sir. I don't know if there would be any rebuttal that you would want to elicit from them, so I can't really answer that question. I would just simply say prepare accordingly.

EL Yes, ma'am.

R Anything else, Mr. Hopp?

EL No.

R All right. Anything else, Ms. Barker, before we close for today?

CL No.

R All right. I'm going to close the record at this time. It is 9:36 a.m. and we will reconvene this matter at a later date. Thank you all very much and have a nice day.

CL You, too.

EL Thank you.

CL Thank you.

EW1 Thank you.

R Thank you.

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C Thank you.

R Bye-bye.
EW2 Thank you.

R The record is closed.

I hereby certify that, to the best of my ability, the foregoing is an accurate transcript of the testimony given in the hearing held by the Referee in conjunction with the above-captioned case.



Enrico E. Fabian, Transcriptionist
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